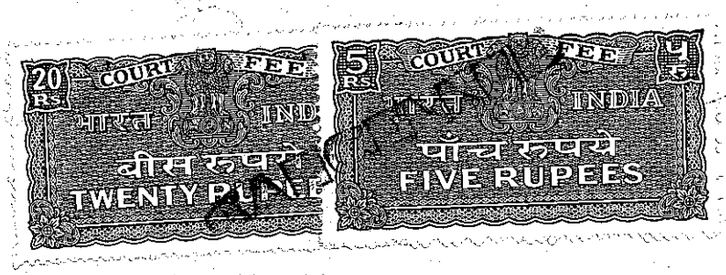

(3)

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

WRIT PETITION No. 736 OF 1996

PETTIONER : D.S.Ratre, aged about 39 years, son of Shri Naresh Ram Ratre, R/O Village Kurud Dhamtari, Rakkas P.O. Kurud, Tahsil: Dhamtari, District Raipur, (M.P.)

- Vs. -

RESPONDENT : Bilaspur Raipur Kshetriya Gramin Bank, Head Office, Dayalbag, Bilaspur District: Bilaspur, (M.P.) through its Chairman Bilaspur Raipur Kshetriya Gramin Bank, BILASPUR, (M.P.)

PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN THE NATURE OF CERTIORARI OR MANDAMUS OR OTHER APPROPRIATE WRIT OR DIRECTION.

1. Particulars of the petitioner:-
   As per the cause title above.

2. Particulars of the Respondents:-
   As per the cause title above.

3. Particulars of the order against which this petition is made:-

   (i) Order dated 31/3/1995 (With reference to ANNEXURE P-1)

   (ii) Order No.:- D/A/Secretariate/552/94-95

   (iii) Passed by:- Chairman & Disciplinary Officer, Bilaspur Raipur Kshetriya Gramin Bank, Bilaspur.

   (iv) Subject in brief:- By the aforesaid order the services of the petitioner has been terminated.

4. Delay in filing the petition, if any, and explaination for it, if any:-
   There is no delay in filing this petition.

Kamla Verma
K. Verma
19/2/96
Oath Commissioner JBP

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HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P. No. 736 of 1996

Petitioner D. S. Ratre

Versus

Respondents Bilaspur Raipur Kshetriya Gramin Bank

Post for order on 3rd May, 2006.

Sd/-
SATISH K. AGNIHOTRI
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P. No. 736 of 1996

Petitioner D. S. Ratre

Versus

Respondents Bilaspur Raipur Kshetriya Gramin Bank

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri.**

Smt. Indira Tripathi, Advocate with Shri Sunil Sahu, Advocate for the petitioner.

Miss Sunita Jain, Advocate for the Respondent.

ORDER

(3rd May, 2006)

The following order of the Court was passed by **Satish K. Agnihotri, J.**

1. The present petition filed under Article 226/227 of the Constitution of India impugns the order dated 31.3.1995 (Annexure P/1) whereby the petitioner was removed from service.

2. The undisputed facts in nutshell are that, on 21.10.1993 (Annexure P/3) the petitioner was served with a charge sheet to submit his reply within a period of 10 days from the date of receipt of the charge sheet, containing two charges, firstly, the petitioner received a sum of Rs. 9000/- on 7.12.1992 while working as Clerk-cum-Cashier from the Customer (Shri Narayan Patel) and not deposited the same in the Bank before 30.1.1993, and secondly, that the petitioner in order to benefit him and to serve his interest sold the hypothecated vehicle without closure of the Loan Account No. DL/V/2/89 and without discharging the liability of making payment to the Bank

before 24.2.1993. The above stated conduct of the petitioner was treated as grave misconduct under Regulation 30 (1) of the Bilaspur Raipur Kshetriya Gramin Bank Staff Service Regulations, 1980.

3. The petitioner submitted his reply on 2.11.1993 (Annexure P/4) stating that he had not received any money on 7.12.1992 from the customer, Shri Narayan Patel but the same was received on 27.1.1993 which was deposited in the Bank on 29/30.1.1993. With regard to the charge No.2 the petitioner submitted his reply that the disputed vehicle was used for the purpose of remittance work and the said vehicle was not in such a condition as to perform the remittance work which was very urgent. Keeping in view the condition of the vehicle, the vehicle was transferred to other person. The Bank has not suffered any loss on account of the transfer of the vehicle, as the amount was paid with interest on 18.9.1993 and 27.10.1993.

4. The enquiry was conducted by one Shri G. K. Sharma. The Enquiry Officer, who after having examined all the documents produced by both the parties and considering two witnesses produced by the Bank and one witness produced by the delinquent employee i.e. the petitioner, came to the conclusion that the customer (complainant) Shri Narayan Patel deposited a sum of Rs. 9000/- on 7.12.1992 with the petitioner, who was working as Clerk-cum-Cashier. The petitioner retained the money with him till 30th January, 1993 when the same was deposited through one Shri Laxmi Narayan. Accordingly the charge No.1 was found proved. The charge No.2 was also found proved. The enquiry officer submitted his report on 17.10.1994.

5. On the basis of the enquiry report (Annexure P/5) the Disciplinary Authority issued a show cause notice on 23.2.1995 (Annexure P/6) as to why the punishment of removal from service should not be imposed. A copy of the enquiry report was furnished along with the second show cause notice dated 23.2.1995. Having received the notice dated 23.2.1995 the petitioner submitted his reply on 6.3.1995 (Annexure P/7) to the effect that the enquiry report was perverse, as the complainant has failed to produce any receipt of cash paid to the petitioner on 7.12.1992 and further it was stated that in fact the cash was handed over to the petitioner on 27.1.1993 which could be deposited on 30.1.1993 on account of some unavoidable circumstances. The petitioner further submitted that in the ledger, the entry made by him on 21.1.1993, was by mistake.

6. After having considered the reply of the petitioner, the disciplinary authority vide impugned order dated 31.3.1995 (Annexure P/1) imposed the punishment of removal from service. The petitioner preferred an appeal to the Board of Directors of the respondents on 16.5.1995 (Annexure P/8), reiterating the same submissions which he had made in the reply to the second show cause notice. The appellate authority by his order dated 1.3.1996 (Annexure R/7) dismissed the appeal agreeing with the findings of the enquiry officer and the order passed by the disciplinary authority holding that the misconduct committed by the petitioner is of very serious nature, of having committed gross financial irregularity and

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comes within the purview of "grave misconduct" and as such the punishment of removal from service was just and proper.

7. Being aggrieved the petitioner has filed this petition impugning the order of removal dated 31.3.1995 (Annexure P/1) without impugning the order dated 1. 3. 1996 (Annexure R/7). The order dated 31.3.1995 passed by the disciplinary authority was confirmed and merged in the appellate order dated 1.3.1996. The petitioner has not impugned the appellate order dated 1.3.1996 (Annexure R/7) passed by the appellate authority.

8. The main submission of Smt. Indira Tripathi, learned counsel for the petitioner is that the customer (complainant) has failed to produce any documents which would indicate that the petitioner had received Rs. 9000/- by cash on 7.12.1995. It was further submitted that the Bank has not produced any voucher or pay slip dated 7.12.1992 indicating that the said amount was received on 7.12.1992. It was therefore submitted that the enquiry report is perverse and based on no evidence and as such the same deserves to be quashed.

9. On the other hand, learned counsel appearing for the respondents Miss Sunita Jain, submitted that the petitioner had not issued any receipt against the receipt of Rs. 9000/- by cash on 7.12.1992. It is clear from the statement of the petitioner itself that the petitioner was receiving cash and making entries to the bank records and depositing in the Bank subsequently. The petitioner, on the contrary, stated that the petitioner has not received the amount on 7.12.1992 but has received the amount on 27.1.1993 which was deposited on 30.1.1993. The petitioner has not issued any slip or receipt of

payment as alleged on 27.1.1993 also. Learned counsel further submitted that the enquiry was conducted after having examined the petitioner, the petitioner's witness, documents produced by the petitioner, documents produced by the Bank and the witnesses produced by the Bank. There is no irregularity or perversity in the enquiry and the enquiry report is based on sufficient evidence.

10. After having heard learned counsel for the parties and having perused the pleadings and documents appended to the writ petition and return, it is crystal clear that the contention of the petitioner to the effect that the complainant has not produced any slip or receipt which would go to show that the amount of Rs. 9000/- so paid to the petitioner on 7.12.1992, is not sufficient to hold that the enquiry was perverse or the enquiry report was based on no evidence. It is found that even if the statement of the petitioner is accepted as it is, the petitioner had not issued any slip or receipt even on 21.7.1993 when admittedly he has received the amount which was deposited in the Bank on 30.3.1993. It appears that the petitioner was in the habit of taking money from the customers and retaining the same with him for sometime and thereafter the petitioner used to deposit in the Bank.

11. The enquiry report does not warrant any interference as it is just, proper and based on sufficient evidence.

12. The enquiry report has been upheld by the disciplinary authority as well as by the appellate authority. This Court in exercise of its jurisdiction under Article 226/227 of the Constitution of India should not interfere and re-appreciate the

evidence and come to a different conclusion which may also be one of probable conclusions.

13. The Supreme Court in **Govt. of T.N. and others Vs. S. Vel Raj** { (1997) 2 S.C.C. 708 } observed that "the finding recorded by the Enquiry Officer and confirmed by the appellate authority were based upon the evidence led during the enquiry and it was not even contended that the said findings were perverse. It was, therefore, not open to the Tribunal to record contrary findings and hold that the charge against the respondent was not proved."

14. The Supreme Court in the case of **Kuldeep Singh Vs. Commissioner of Police and others** { (1999) 2 S.C.C. 10} observed as under :-

> "9. Normally the High Court and this Court would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of "guilt" is based on no evidence, it would be perverse finding and would be amenable to judicial scrutiny.
>
> 10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which would be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with".

15. The another case of **Yoginath Bagde Vs. State of Maharashtra and another**, { (1999) 7 SCC 739} , the Supreme Court after considering the earlier decisions observed as under :-

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"51.....The law is well settled that if the findings are perverse and are not supported by evidence on record or the findings recorded at the domestic trial are such to which no reasonable person would have reached, it would be open to the High Court as also to this Court to interfere in the matter. In Kuldeep v. Commr. of Police this Court, relying upon the earlier decisions in Nand Kishore Prasad v. State of Bihar, State of Andhra Pradesh v. Rama Rao, Central Bank of India Ltd. v. Prakash Chand Jain, Bharat Iron Works v. Bhagubhai Balubhai Patel as also Rajinder Kumar Kindra v. Delhi Admn. laid down that although the court cannot sit in appeal over the findings recorded by the disciplinary authority or the enquiry officer in a departmental enquiry, it does not mean that in no circumstance can the court interfere. It was observed that the power of judicial review available to a High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and the courts can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse".

17. In case of **B.C. Chaturvedi Vs. Union of India and others** {(1995) 6 SCC 749} observed as under:-

"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. When an enquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has

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jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case".

18. In another latest decision, the Supreme Court in **V. Ramana Vs. A.P. SRTC and others** { (2005) 7 SCC 338 } observed as under :-

"11. The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision for that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision".

19. From the perusal of the papers and the observations of the Supreme Court in the cases, stated above, it is clear that the allegations have been established on the basis of sufficient evidences which a reasonable person, acting reasonably and with objectivity may arrive at a finding of holding the charges against the delinquent officer. I have not found that any charge has been proved on the basis of no evidence or unreliable evidence or mere conjunctures and surmises.

20. As a result, the petition fails and is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur